EXHIBIT C6-2

FCC WC Docket No. 02-359
Cavalier Telephone, LLC's Reply Brief
November 3, 2003

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition of Cavalier Telephone, LLC	)	WC Docket No. 02-359
Pursuant to Section 252(e)(5) of the	)	
Communications Act for Preemption	)	
of the Jurisdiction of the Virginia State	)	
Corporation Commission Regarding	)	
Interconnection Disputes with Verizon	)	
Virginia, Inc. and for Arbitration	)	

AFFIDAVIT OF MARTIN W. CLIFT

1) On or about October 13, 2003, Cavalier sent the attached letter to 13 county and PSAP agencies in Virginia.

2) The letter initiated billing for Cavalier 911 services.

3) Cavalier had not previously billed these agencies for 911 services.

4) Since this letter was mailed, I have received inquiries from the following individuals regarding the bill. These Individuals have expressed a lack of understanding of Cavalier's role in the 911 service delivery process.

   i) Gail Boham – City of Fairfax, VA

   ii) Linda Lightly – City of Fairfax, VA

   iii) Sergeant Anderson – City of Chesapeake, VA

   iv) Chris Taylor – County of Fairfax, VA

   v) Richard Stevenson – County of Arlington, VA

   vi) Roy Choice, and

   vii) Vickie Smith - City of Virginia Beach

5) I explained to these individuals the Cavalier services and interdependencies with Verizon.

6) Not one individual has indicated that the bill is going to be paid.

7) Cavalier has not received any payments from any Virginia PSAPs.

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Declaration of [name]

I declare under penalty of perjury that I have reviewed the foregoing testimony and that those sections as to which I testified are true and correct to the best of my knowledge.

Executed the 3 day of November, 2003.

Martin W. Cluff.

[name]

October 14, 2003

Commissioner of Revenue
City Hall
10455 Armstrong St., Suite 210
Fairfax, VA 22030-3630

Dear Sir or Madam:

Cavalier Telephone as a competitive local exchange carrier provides local telephone service to customers in your service area competing with Verizon and other carriers. We have been providing local services in your coverage area for over two years and as such have collected E-911 charges from our customers and remitted such amounts to you. Although Cavalier has been authorized, pursuant to its tariffs, to be compensated for its role in the delivery of your 911 services, prior to now you were not billed. This memo initiates prospective billing at the tariff rates. We are not billing for any past 911 services rendered.

A copy of the provisions of our tariff that pertain to this service is attached. You may find the entire tariff at the following link:
http://www.cavtel.com/company/tarrifs/index.shtml.

In brief, Cavalier provides database entry and call routing functions for your 911 services. Summaries of the rates are:

Database Entry (Address Information) $600 per month
Call Routing (Automatic Number Identification) $92.50 per 1000 lines

We would appreciate your prompt payment of the amounts billed. If you have any questions you may call me at 804-422-4515.

Sincerely,

Martin W. Clift, Jr.

Martin Clift
Vice President – Regulatory Affairs

EXHIBIT C16-4

FCC WC Docket No. 02-359
Cavalier Telephone, LLC's Reply Brief
November 3, 2003

BEFORE THE

STATE CORPORATION COMMISSION OF THE

COMMONWEALTH OF VIRGINIA

PETITION OF	)	
	)	
CAVALIER TELEPHONE, LLC	)	
	)	Case No. PUC 2002-00088
For Injunction Against Verizon	)	
Virginia Inc.For Violations	)	
of Interconnection Agreement	)	
and For Expedited Relief to Order	)	
Verizon Virginia Inc. to Provision	)	
Unbundled Network Elements in Accordance	)	

REPLY TESTIMONY OF ROBERT W. WOLTZ, JR. ON BEHALF OF VERIZON VIRGINIA INC.

BEFORE THE

STATE CORPORATION COMMISSION OF THE

COMMONWEALTH OF VIRGINIA

PETITION OF	)	
	)	
CAVALIER TELEPHONE, LLC	)	
	)	Case No. PUC 2002-00088
For Injunction Against Verizon	)	
Virginia Inc.For Violations	)	
of Interconnection Agreement	)	
and For Expedited Relief to Order	)	
Verizon Virginia Inc. to Provision	)	
Unbundled Network Elements in Accordance	)	

REPLY TESTIMONY OF ROBERT W. WOLTZ, JR.
ON BEHALF OF VERIZON VIRGINIA INC.

Q. PLEASE STATE YOUR NAME AND TITLE.

A. My name is Robert W. Woltz, Jr. I am the President of Verizon Virginia.

Q. ARE YOU THE SAME ROBERT WOLTZ THAT FILED DIRECT TESTIMONY IN THIS CASE ON APRIL 25, 2003?

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR REPLY TESTIMONY?

A. My testimony will respond to a number of positions presented in the testimony filed by the other parties in this case. Specifically, I will respond to allegations regarding Verizon's DS-1 UNE provisioning policy and carrier of last resort obligations.

Q. AT&T (P. 5, 11-12), CAVALIER (P. 8), AND COVAD (P. 9) CONTEND THAT VERIZON'S DS-1 UNE PROVISIONING POLICY IS DISCRIMINATORY BECAUSE VERIZON DOES NOT REFUSE TO PROVISION RETAIL CUSTOMER ORDERS DUE TO "NO FACILITIES". DO YOU AGREE?

A. No. As a threshold matter, Verizon's DS-1 unbundled network element ("UNE") and DS-1 special access are different services, and therefore there can be no requirement that customers of these different services be treated the same. Moreover, while I am not an attorney, I believe that the other parties' arguments are based on a fundamental misconception of what the nondiscrimination provisions of state and federal law require. The law does not require that all customers be treated alike for all services – in fact, quite the opposite is true. Where services are the same (which is not even the case for retail special access and UNEs), both state and federal law still recognize that reasonable differences in treatment between classes of customers is appropriate and, in some cases, required. Moreover, even if the services were the same, federal limitations on the provision of UNEs constitute a reasonable basis under Virginia state law for treating UNE customers differently than purchasers of retail special access with respect to construction of new facilities.

Q. HOW ARE VERIZON'S DS-1 UNE AND DS-1 SPECIAL ACCESS SERVICES DIFFERENT?

A. Special access and UNEs have different terms and conditions, different prices, different customers, and entirely different legal requirements. Indeed, the FCC has explicitly recognized that access services and UNEs are different: "[w]hen interexchange carriers purchase unbundled elements from incumbents, they are not purchasing exchange access 'services.' They are purchasing a different product, and that product is the right to exclusive access or use of an entire element."[1]

Another fundamental difference is that federal law compels incumbents to make network elements available to competing carriers, but not to retail customers. CLECs have the ability to buy either UNEs under appropriate terms, conditions and prices under their interconnection agreements, or special access under the appropriate set of terms, conditions and prices in the relevant tariffs. Retail customers, on the other hand, do not even have the option of buying UNEs. There is no discrimination against CLECs vis a vis retail customers where Verizon gives them ***more*** flexibility in their selection of products than retail customers.

As Mr. Albert explains in his testimony, technically UNE DS-1s and special access DS-1s are configured differently, and as a result the operational aspects of testing and trouble isolation are also different. Because UNEs and access are different products, and retail customers are not even entitled to UNEs, there is no basis for comparing the two and grafting terms and conditions from the voluntary access offering onto the compelled unbundled offering.

[1] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd

Q. IF SPECIAL ACCESS DS-1S AND UNE DS-1S WERE THE SAME SERVICE OR PRODUCT, WOULD DIFFERENT TREATMENT OF THE CUSTOMERS STILL BE APPROPRIATE?

A. Yes. As I understand it, different treatment of utility customers has always been proper under Virginia law, as long as the difference has a reasonable basis under the facts and circumstances. In other words, differences in the development and application of utility tariffs, practices and services is simply the act of recognizing practical and economic differences among customers and tailoring services and prices accordingly.

There are many examples where services are priced differently, though virtually identical, because of regulatory policy, probably growing out of public interest concerns. Business telecommunication customers, for example, pay different rates for basic dial tone than residential customers, even though the facilities enabling the services are virtually identical. Rural residential customers pay lower rates than urban ones without regard to the cost of providing their respective services. Some calls to 411 are free and some are charged for, because the SCC decided to require that each residential customer receive a certain number of free 411 calls. This is certainly not because it costs Verizon less to provide the forth requested number than it does to provide the second one. In addition, the Virginia Universal Service Plan ("VUSP") is clearly discriminatory

15499, ¶ 358(1996) ("First Report & Order").

in both the rates charged and the services offered to customers on food stamps. The Commission determined in all of these cases that the basis for their discrimination among customers was reasonable.

There are other examples of different treatment of utility customers outside the telecommunications context. "Interruptible" gas customers pay lower rates than customers who require firm service. Customers with time-of-use electric rates pay higher rates during peak periods, and lower rates during the off-peak, than similar customers on basic rates. New customers located at long distances from existing distribution systems face a different tariff structure for installing service than customers living in built-up service areas.[2] The tariff structure for gas or electric services for large industrial firms would be entirely unreasonable if applied to residential or small commercial customers. Customers able to use utility services at high volumes typically achieve cost savings per unit of volume compared to lower usage customers.[3] Though the practice has largely been eliminated now, for many years, customers who preferred underground electric service to their homes paid a premium for that installation compared to those using overhead service. With "declining block" rates, even customers within the

[2] Under many electric companies' "line extension policies," the first 100 feet or so of a new service installation is free. Charges for longer installations are normally based on a comparison of the cost of the installation with the projected revenue to be realized from the customer. In the case of gas companies, there are still many areas in Virginia that, even though they are in a franchised gas territory, have no gas facilities at all, and customers simply may not obtain service unless they are willing to pay almost the entire cost of the extension themselves.

[3] Examples would be industrial customers who can take electric or gas service at levels close to that at which the utility itself transmits those services over long distances, or telecommunications customers that have a need for WATS lines.

same rate classifications will pay differing amounts depending on their level of usage.

These distinctions, and many others of a similar nature, are reasonable, lawful, and have been consistently approved by the Commission. Both Congress and the FCC have determined that UNEs and special access need not be treated the same, regardless of how similar they may appear to AT&T, Cavalier, or Covad.

Q. SHOULD THE COMMISSION GRANT COVAD'S REQUEST FOR AN INTERIM RULING THAT VERIZON BE REQUIRED TO PROVISION AND CONDITION DS-1 UNE LOOPS IN THE SAME MANNER THAT IT PROVISIONS DS-1 LOOPS TO ITSELF (P. 7-8)?

A. No. It should be noted that Verizon does not provision DS-1 loops to itself. Verizon provisions DS-1 UNE loops to each of its CLEC customers under nondiscriminatory terms, conditions and prices as set forth in the interconnection agreements. And it provisions Special Access DS-1 Services to its retail and wholesale customers (including CLECs) under an appropriate set of nondiscriminatory terms, conditions and prices as set forth in its state and federal access tariffs. In both cases Verizon offers the service to each of the customer groups on nondiscriminatory terms, conditions and prices. It would be inappropriate for the Commission to require that Verizon offer UNEs to retail customers at TELRIC prices. It would be similarly inappropriate for the

Commission to require Verizon to offer special access to CLECs under UNE terms and conditions.

Q. AT&T (P. 9-11), CAVALIER (P. 6), AND ALLEGIANCE (P. 8-9) RELY A GREAT DEAL ON THE HEARING EXAMINERS REPORT IN CASE NO. PUC-020046 ("THE 271 CASE") TO SUGGEST THERE IS EVIDENCE THAT VERIZON'S WHOLESALE PROCESSFOR DS-1 UNE LOOPS INHIBITS COMPETITION. SHOULD THE COMMISION RELY ON THE HEARING EXAMINER'S REPORT ON THIS ISSUE?

A. No. The only issue facing the Commission in the 271 Case was whether Verizon met the fourteen-point checklist in Section 271 of the Telecommunications Act of 1996 (the "Act"). When other parties claimed that Verizon did not meet the checklist requirement to offer unbundled loops because of its provisioning policy for high capacity loops, the only issue became whether Verizon's provisioning policy in Virginia was the same as in other states where Verizon had been granted 271 relief by the FCC. Clearly, it was (and is) the same, and no party challenged Verizon's evidence on that issue. Indeed, in granting our 271 application, the FCC found that the existing policy meets the 271 requirements, which was the only issue before the hearing examiner. In contrast, as with the numerous other issues the CLECs tried to shoehorn into the 271 Case, the issue of whether Verizon's policy inhibited competition was simply not an issue to be decided in the 271 Case, and there is no reason for the Commission to look to the CLECs' claims in that case nor the Hearing Examiner's discussion of their claims.

Q. SIMILARLY, AT&T RELIES ON THE HEARING EXAMINER REPORT IN THE 271 CASE TO SUGGEST THAT AS A RESULT OF VERIZON'S DS-1 UNE PROVISIONING POLICY, ITS CURRENT DS-1 UNE PRICES DO NOT COMPLY WITH TELRIC (P. 26-28). WHAT IS YOUR RESPONSE?

A. Once again, the Hearing Examiner's report does not shed any light on whether Verizon's DS-1 UNE loop provisioning policy complies with TELRIC. Although counsel for Cavalier and Staff, as well as the Hearing Examiner, tried to develop cost "evidence" through cross examination of non-cost witnesses, the record in that case demonstrates that none of those witnesses had personal knowledge of the cost study used to establish Verizon's current DS-1 UNE loop rates.[4] It is therefore inappropriate for anyone to rely on the record from the 271 Case to draw any conclusions about the TELRIC assumptions used to set our current UNE prices. However, since the question of consistency between TELRIC pricing and our policy is clearly an issue in this case, we have provided both cost experts and an economist to address any questions.

Q. DOES VERIZON'S DS-1 UNE PROVISIONING POLICY IMPEDE COMPETTION AS CLAIMED BY AT&T (P. 9-11, 12-13), CAVALIER (P. 8), AND ALLEGIANCE (P. 5)?

A. No. AT&T, Cavalier, and Allegiance suggest that just because Verizon will not construct a new UNE DS-1 at the price they would prefer (i.e., TELRIC), they

[4] Case No. PUC-02-00046 Tr. 686-93, 803-810.

cannot compete. However, the Act does not require Verizon to build new facilities for CLECs. The Act merely requires that Verizon provide unbundled access to existing facilities at cost plus a reasonable profit (interpreted by the FCC to mean at TELRIC prices). Where existing facilities do not exist, CLECs have the same options available to them as does Verizon: build the facilities itself or hire someone else to build them at a mutually agreeable price.

Indeed, section 251(d)(2) of the Act requires a nationally binding balance between UNE-based competition on the one hand and facilities investment on the other. In particular, it requires a "limiting standard,"[5] that prevents "completely synthetic competition" from undermining "incentives for innovation and investment in facilities."[6] Thus, the Act only requires Verizon to unbundle ***existing*** facilities. Where facilities do not exist, Verizon is not required to build them. To require Verizon to do so would be to adopt the same "more is better" unbundling approach that the Supreme Court and the D.C. Circuit have squarely rejected. That approach would create synthetic competition in the short term,[7] at the expense of any realistic prospect of facilities-based competition in the long term.

Moreover, Verizon's DS-1 UNE Loop provisioning policy does not impair competition since high-capacity loops are available from many alternative

[5] *AT&T Corp. v. Iowa Utilities Commission*, 525 U.S. 366, 388 (1998).

[6] *United States Telecomm Association v. FCC*, 290 F.3d 415, 424.

[7] *Id*

suppliers, and the provision of special access service is highly competitive.[8] While AT&T claims that non-ILEC facilities capable of providing special access services have captured only a small market on a nationwide basis, the fact remains that non-ILEC facilities are available. And even where they are not available, nothing stops AT&T from building the facilities itself or contracting with another party to build them exclusively for AT&T (or from purchasing special access from Verizon for that matter).

For example, AT&T itself has reported that it serves more than 30 million voice-grade equivalent lines over its network, most of which are high-capacity special access and private lines.[9] Indeed, last fall, AT&T's President stated that with these facilities in place, AT&T's "core platform investments are behind us," and AT&T's "scale & ubiquity" in the provision of "access/local services" are one of its "sources of competitive advantage."[10] And, of course, AT&T is not the only CLEC that has deployed extensive high-capacity loops. CLECs as a whole serve more than 150 million voice-grade equivalent lines over fiber networks that span more than 180,000 route miles and provide connections to at least 30,000 buildings.[11] CLECs have used these extensive high-capacity facilities to capture

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[8] *See, e.g.*, Verizon Comments in CC Docket 01-338 at 137-138 (FCC filed Apr. 5, 2002); *UNE Fact Report 2002*, CC Docket 01-338, at IV-1-IV-7, V-18-V-20 (April 2002). Docket 01-338 at 137-138 (FCC filed Apr. 5, 2002); *UNE Fact Report 2002*, CC Docket 01-338, at IV-1-IV-7, V-18-V-20 (April 2002).

[9] See D. Dorman, President, AT&T, Presentation Before the Lehman Brothers T3 Telecom, Trends & Technology Conference (Dec. 6, 2001) (AT&T Business serves "over 30 [million] DS0 equivalents"); Reply Comments of AT&T in CC Docket No. 01-338 at 183 n.135 (FCC filed July 17, 2002) (AT&T's 30 million voice-grade equivalent consists "principally" of high-capacity private lines).

[10] Presentation of David Dorman, President, AT&T, Goldman Sachs Communacopia, at 6 (Oct. 2, 2002).

[11] *See UNE Fact Report 2002* at I-1, I-8, IV-1-IV-4.

between 29 and 36 percent of the nationwide revenues for special access service.[12]

Q. COVAD CLAIMS THAT VERIZON'S DS-1 UNE PROVISIONING POLICY IS UNLAWFUL AND TREMENDOUSLY HARMFUL TO COVAD AND ITS CUSTOMERS (P. 4). ARE THEY CORRECT?

A. No. The FCC has repeatedly held that Verizon's current DS-1 UNE provisioning policy does not violate the Act or its current rules. Thus, a change in the FCC's existing rules would be necessary in order for Verizon's policy to be unlawful, which is the issue that will be decided by the FCC's upcoming Triennial Review Order. As I stated in my direct testimony, the FCC's press releases regarding the Order suggest it will change the current rules with respect to this issue. And, as Verizon has stated time and time again, Verizon will change its policy to conform to the new rules. However, until those new rules take effect, Verizon's DS-1 UNE provisioning policy is consistent with federal law, as the FCC has recognized.

Q. WHAT DOES CAVALIER REQUEST THAT THE COMMISISON DO IF IT DOES NOT ORDER VERIZON TO CHANGE ITS CURRENT DS1 UNE LOOP PROVISIOING POLICY (P. 9)?

A. Cavalier asks that if the Commission does not order Verizon to change its policy, then for each customer rejected for "no facilities" that is ultimately provisioned

[12] *See id.* I-13, V-18-V-20.

through a triplicate ordering process, Verizon should be required to offer a similar amount of customers to a competitor.

Q. SHOULD THE COMMISSION ADOPT THIS PROPOSAL?

A. No. I must first note, as explained in Don Albert's Rebuttal Testimony, there is no longer a "triplicate" ordering process for DS-1s as described by Cavalier. Second, if the Commission does not order Verizon to change its policy (which is should not), then no further action by the Commission would be appropriate. Verizon's current policy is consistent with current FCC rules, and will be changed to the extent necessary to conform with new rules resulting from the FCC's Triennial Review Order. Any further action by the Commission would inappropriately "punish" Verizon for complying with federal law.

Third, Cavalier's proposal makes no sense. Cavalier seems to suggest that if Verizon rejects 30% of CLEC DS-1 UNE Orders for "no facilities," then it should make arrangements for 30% of its customers to obtain service from CLECs. This turns the notion of competition on its head. It is the end user, not the Commission or Verizon who should determine which carrier provides service to that end user. Nothing in the Act or Virginia law would give the Commission the power to order Verizon to abandon some percentage of its customers to a competitor.

Q. DID ANY OF THE CLEC PARTIES OFFER ANY EVIDENCE ON THE OBLIGATIONS OF A CARRIER OF LAST RESORT ("COLR")?

A. No. Both AT&T and Cavalier claimed, in opposition to Verizon's Motion to Amend Order Establishing Hearing, that the issue of carrier of last resort was a mix of law, policy, and fact, and thus it needed the opportunity to present evidence on the issue, rather than briefs. However, in its testimony, AT&T merely agreed with and quoted from the analysis contained in the OGC Brief on carrier of last resort obligations (p. 28-29). Cavalier likewise offered only legal arguments, and merely points out that COLR issues arise only if the Commission has designated DS-1 service as part of the "universal service package." (p. 6-8).

Q. HAS THE COMMISSION DESIGNATED DS-1 SERVICE AS PART OF THE "UNIVERSAL SERVICE PACKAGE"?

A. Not to my knowledge.

Q. AT&T CONTENDS THAT THIS COMMISSION'S ACTIONS IN THIS CASE SHOULD ENCOMPASS ALL HIGH CAPACITY LOOPS AT THE DS-1 LEVEL AND ABOVE (P. 31-32). HOW DO YOU RESPOND?

A. AT&T's suggestion appears to be outside the scope of the Order Establishing Hearing, which addresses only DS-1 loops, despite requests by AT&T and Cavalier to address other types of loops. Verizon notes once again, however, that it will conform its high capacity loop provisioning policy to the requirements of the pending FCC Triennial Review Order. To the extent that order addresses loops above the DS-1 level, Verizon's policy will do the same.

Q. SHOULD THE COMMISISON SET INTRASTATE ACCESS RATES FOR HIGH CAPACITY LOOPS AT TELRIC LEVELS OR ESTABLISH METRIC AND PAP REMEDIES FOR SPECIAL ACCESS IN THIS PROCEEDING AS REQUESTED BY AT&T (P. 6, 34-36)?

A. No. Again, AT&T's proposals appear to go far beyond the scope of this investigation. In its Order Directing Investigation, issued October 28, 2002, the Commission directed the Staff "to conduct an investigation into Verizon Virginia's policies and practices in provisioning DS-1 ***UNE*** loops to Cavalier."[13] It did not direct the Staff to consider whether the terms of Verizon's intrastate special access tariffs should be changed, or to establish performance criteria for special access circuits offered on a ***non-UNE*** basis. In its petition to intervene, AT&T made no request to expand the scope of the proceeding beyond the subject matter of Cavalier's original complaint, nor did it state, either explicitly or implicitly, that it would be seeking such broad-reaching and novel relief as resetting rates for Verizon's tariffed special access offerings at TELRIC, or modifying the C2C guidelines and PAP adopted by the Commission to encompass a whole new set of metrics for non-UNE special access products – which have nothing to do with Verizon's DS-1 UNE provisioning. In fact, in permitting AT&T and other parties to intervene and file comments in this proceeding, the Commission specifically ***declined*** to expand the scope of the investigation to other types of services, such as DSL and voice grade loops.[14] More significantly,

[13] Order Directing Investigation, Case No. PUC-2002-00088 (October 28, 2002), at 5.

[14] Order Granting Interventions, Case No. PUC-2002-00088 (November 26, 2002), at 4.

in its Order Establishing Hearing, the Commission did not include special access in any of the issues to be addressed by the parties in testimony or hearings. AT&T did not request that the Commission amend that order to include special access, either in its own motion or in response to Verizon's Motion to Amend. AT&T's attempt to expand the scope of this proceeding even further in its testimony should be rejected and its proposals denied.

Q. HAS AT&T JUSTIFIED SETTING SPECIAL ACCESS RATES AT TELRIC?

A. No. Intrastate retail DS-1 and DS-3 special access services are not UNEs, and thus there is no legal requirement under the Act (or otherwise) for these services to be priced at TELRIC. Indeed, as discussed above, the FCC has explicitly recognized that special access and UNEs are different, that special access does not satisfy an ILEC's UNE obligations,[15] and that the pricing of these two products must remain different.[16] Setting the prices the same, in fact, would be tantamount to expanding the FCC's definition of the high capacity UNE to services that do

[15] In the UNE Remand decision, the FCC rejected the notion that a special access offering could satisfy an ILEC's unbundling obligation. *In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd 3696, ¶ 67 (1999) ("US West maintains that it need not unbundle local transport because requesting carriers can purchase its tariffed special access services. In light of the little weight we assign to the availability of resold services in our analysis, we reject US West's argument. This argument would foreclose competitive LECs from taking advantage of the distinct opportunity Congress gave them, through section 251(c)(3), to use unbundled network elements.")

[16] *In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Supplemental Order*, 15 FCC Rcd 1760 (1999), and *In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Supplemental Order Clarification*, 15 FCC Rcd 9587 (2000), *aff'd sub nom, Competitive Telecommunications Ass'n v. FCC*, No. 00-1272 (DC Cir. Oct. 25. 2002).

not qualify for UNE treatment under the FCC's rules. This is precisely the type of "more unbundling is better" approach that the D.C. Circuit has soundly rejected.

Q. HAS AT&T JUSTIFIES ESTABLISHING METRIC AND PAP REMEDIES FOR SPECIAL ACCESS?

A. No. AT&T has failed to provide any evidence whatsoever that performance metrics and standards for Verizon's tariffed special access services in Virginia are warranted. However, if the Commission were to adopt any special access service metrics, it should not incorporate them into the C2C Guidelines and associated PAP. The C2C Guidelines and PAP were established to provide a mechanism for monitoring the quality of service Verizon provides to CLECs now that Verizon is permitted to offer long distance service in Virginia. Under the Act, Verizon is required to provide service to competitors on the same level – *i.e.*, at parity – with the service it provides to its own retail customers and affiliates. Verizon voluntarily agreed to pay bill credits to CLECs pursuant to the terms and conditions of the PAP whenever it fails to do so. Expanding that PAP to include metrics pertaining to intrastate special access services provided under Tariff 204 and Tariff 217 would run afoul of the agreement embodied in the PAP and is inconsistent with the purpose of the C2C Guidelines and of the PAP itself.

The C2C Guidelines and PAP relate to services specifically designed for and used by CLECs under the Act as modes of competitive entry into the local exchange and access markets – *i.e.*, resale services, UNEs, and interconnection (including collocation). Verizon must provide these services to CLECs in compliance with

the Section 271 checklist. The C2C Guidelines and PAP are intended to protect against a deterioration of the quality of these services that might effectively prevent entry into the local markets.

In contrast, retail special access services have nothing to do with the Section 271 approval process. Indeed, the FCC has stated on numerous occasions that issues pertaining to "provisioning of special access service are not relevant to compliance with checklist item four. As we held in the *SWBT Texas* and *Bell Atlantic New York Orders*, we do not consider the provision of special access pursuant to tariff for purposes of checklist compliance. *SWBT Texas Order*, 15 FCC Rcd at 18504, para. 335; *Bell Atlantic New York Order*, 15 FCC Rcd at 4126-27, para. 340. Checklist item 4 does not address itself to retail services Verizon provides to competitors such as special access services."[17] The FCC also noted that "checklist compliance is not intended to encompass provision of tariffed interstate services simply because these services use some of the same physical facilities as a [Section 271] checklist item."[18]

Given that special access services are unrelated to the Section 271 process and are not included among the specific modes of entry to be covered by the PAP, there is no legitimate basis for incorporating special access service metrics into the PAP or the C2C Guidelines. Verizon voluntarily agreed to the PAP and to pay credits

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[17] *In the Matter of the Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) And Verizon Global Networks Inc., For Authorization to Provide In-Region, InterLATA Services in Massachusetts*, Memorandum Opinion and Order, CC Docket 01-9 (rel. April 16, 2001) (the "*Verizon Mass 271 Order*") n. 488.

[18] *Id.* at ¶ 211, citing 15 FCC Rcd 4126-27, ¶ 340.

if it failed to perform as required, and any change to the PAP to include special access metrics would require Verizon's agreement as well.

Finally, the C2C Guidelines and the PAP are applicable only to Verizon. Imposing a set of performance standards and financial incentives on Verizon for special access services without making those standards and financial incentives applicable to the activities of *all* carriers in the Commonwealth would be contrary to Virginia law. Section 56-265.4:4(B)(3) of the Virginia Code requires that rules implemented by the Commission to govern competition in the provision of local exchange service must provide "equity in the treatment of the [CLEC] and incumbent local exchange company."[19] To the extent the Commission adopts any special access metrics here (which it should not), it must ensure that they apply to all special access providers in Virginia, not just Verizon.

Q. WAS CAVALIER "FORCED" TO FILE AN ACCELERATED ENFORCEMENT COMPLAINT AT THE FCC AGAINST VERIZON, AS IT CLAIMS (P. 4)?

[19] One-sided metrics and performance penalties likewise would violate section 253(b) of the Telecommunications Act of 1996 which provides, in relevant part:

> Nothing in this section shall affect the ability of a State to impose, *on a competitively neutral basis* ..., requirements necessary to ... ensure the continued quality of telecommunications services. (Emphasis supplied)

Imposing service metrics on Verizon alone would hardly qualify as competitively neutral rulemaking, where Verizon clearly is not the only provider of special access services in Virginia. Moreover, contrary to the implication in AT&T's Testimony (p. 37-38), the New York PSC has not incorporated special access metrics into its PAP. Rather, the performance metrics are free-standing and are applicable to *all* local exchange carriers. *See* Case 00-C-2051, *Proceeding to Investigate Methods to Improve and Maintain High Quality Special Services Performance by Verizon New York Inc.,"* Order Denying Petitions for Rehearing and Clarifying Applicability of Special Services Guidelines, issued December 20, 2001 at 14.

A. No. Cavalier was not forced to do anything. Cavalier had the option to join into the complaint filed before this Commission by Broadslate and Alltel last year, but chose not to do so.

Q. SHOULD THE COMMISSION ORER VERIZON TO REFUND TO CAVALIER "OVERCHARGES" IMPOSED UNDER SPECIAL ACCESS PRICING FOR DS-1S THAT CAVALIER SOUGHT TO ORDER AS UNES (P. 8)?

A. No. As explained by Verizon witnesses William Jones and Gary Sanford, Verizon has not "overcharged" Cavalier for DS-1 special access services.

Q. SHOULD THE COMMISSION ADOPT NTELOS' DEFINITION OF "CONSTRUCTION" AS ONLY THE PLACEMENT OF NEW OUTSIDE PLANT FACILITIES (P. 5)?

A. No. First, the FCC has made clear that its Triennial Review Order will identify what activity constitutes construction. This Commission should not—and indeed cannot—alter that definition in any way. Second, as explained by Verizon witness Don Albert, NTELO's contention that the placement of doublers in the field is maintenance activity as opposed to construction is incorrect.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.